SUNOCO ENERGY DEVELOPMENT CO.

IBLA 79-597; 79-604 Decided July 15, 1982

Appeal from decisions of Utah State Office, Bureau of Land Management, readjusting coal lease royalties and other terms and conditions. Utah 05067-08916; Utah 07064-027821.

Decisions vacated; cases remanded.

1. Coal Leases and Permits: Leases -- Mineral Leasing Act: Generally

> Where a coal lease issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provides that the lessor may readjust and fix the royalties payable thereunder, and other terms and conditions, at the end of 20 years from the date of issuance of the lease, and thereafter at the end of each succeeding 30-year period during the continuance of the lease, the adjustment in the royalty rate and other terms and conditions must be made when the 20-year period expires and not at some later date.

APPEARANCES: Gordon P. Selfridge, Esq., Jonathon C. Waller, Esq., Dallas, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decisions of July 2, 1979, the Utah State Office, Bureau of Land Management (BLM), gave Eureka Energy Company (Eureka Energy) notice of proposed readjustment, effective September 1, 1979, of the terms of coal leases Utah 05067-08916 and Utah 07064-027821. Lease Utah 05067-08916 was issued effective July 1, 1952; lease Utah 07064-027821 was issued effective January 1, 1957. Eureka Energy objected to the proposed terms. By decisions of August 15 and 21, 1979, BLM overruled the objections and readjusted the lease terms effective September 1, 1979. Eureka Energy appealed.

Before a decision could be issued by this Board, Eureka Energy indicated its intention to dispose of its coal properties in Utah during the first quarter of 1982, and requested the case files be temporarily remanded to BLM for consideration of the pending assignments. By Order of the Board dated December 30, 1981, the case files were returned to BLM, as requested, with the proviso that the assignee would be recognized as substitute appellant.

By decision of May 12, 1982, BLM approved assignments of these coal leases from Eureka Energy to Sunoco Energy Development Company, which the Board now recognizes as the appellant herein.

The issues before us here are identical to those considered in Kaiser Steel Corp., 63 IBLA 363 (1982). BLM purported to readjust the rental and royalty terms of these leases, and to impose other conditions consonant with the Coal Leasing Amendments Act of 1976, 30 U.S.C. § 207 (1976) [section 6, P.L. 94-377, Aug. 4, 1976, 90 Stat. 1087].

Appellant argues that the decision date of the purported adjustment is contrary to the terms of the leases. Appellant concedes that its leases were issued with a provision that the Secretary of the Interior could readjust the lease terms at the end of each 20-year period. The complaint of appellant, however, is that BLM gave it no notice of a proposal to readjust the lease terms prior to the end of the 20-year period and now is trying to readjust the lease terms at a date long after the end of the 20-year period when the lease permitted such readjustments.

Although in California Portland Cement Co., Rosebud Coal Sales Co., 40 IBLA 339 (1979), cases involving the same issues on coal leases in Utah and Wyoming, this Board originally held that BLM could subsequently readjust the coal lease terms even if no notice of a proposed readjustment had been given to the lessee before the end of the 20-year term, that decision was specifically overruled in Kaiser Steel Corp., supra.

[1] The lessees in California Portland each brought suit in the appropriate United States District Court for review of the Board's decision. In each case the Court ruled against the Government, and on appeal to the Tenth Circuit, the decisions of the lower court were affirmed. In Rosebud Coal Sales Co. v. Andrus, 667 F.2d 949 (10th Cir. 1982); and California Portland Cement Co. v. Andrus, 667 F.2d 953 (10th Cir. 1982), the Circuit Court held that the time for readjusting the royalty, and other terms and conditions of a coal lease, is only at the expiration of the 20-year period.

So, in these cases, where there was no notice prior to the end of the 20-year period from BLM to the lessee that readjustment of the lease terms was contemplated, we must hold that BLM had no authority to belatedly readjust the terms in these coal leases, as the BLM decisions attempted to do.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the

Utah State Office, BLM, appealed from are vacated, and the cases remanded to the State Office for further action consistent with this opinion.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge